INTERNATIONAL LAW, CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES. By Charles Cheney Hyde. Boston: Little, Brown and Co. 1922. Two volumes: pp. lix, 832; xxvii, 925.

In these volumes Professor Hyde has made a contribution to the literature of international law as unique as it is monumental. His contribution is unique because of the emphasis which he places upon the American viewpoint and the use which he makes of the American sources. He writes of international law "chiefly as interpreted and applied by the United States." This does not imply that there is an American international law distinct from general international law. Rather it implies that there is an American understanding of international law. It is from this point of view that the author approaches the subject, seeking primarily "to portray what the United States, through the agencies of its executive, legislative, and judicial departments, has deemed to be the law of nations" (Preface, page vii).

The volumes are planned along familiar lines. The subject is divided into peace, war, and neutrality; and the titles, sub-titles, and section-heads are descriptive in general of the content which we have become accustomed to find in treatises on this subject. More than any other writer, however, the author has made use of American sources, and especially of the state papers, published and unpublished, which constitute the records of our Department of State. Occasional topics are considered almost exclusively with respect to United States law and practice (*e. g.*, passports, §§ 399-406). Generally, however, the topics are discussed from a broader viewpoint with special emphasis upon the law and practice of the United States (*e. g.*, see recognition, §§ 36-50; navigation of rivers, §§ 159-182; claims, §§ 270-309; extradition, §§ 310-341; nationality, §§ 342-398; diplomatic intercourse, §§ 407-488; arbitration, §§ 559-583). The interpretation of characteristic American viewpoints leaves little to be desired (*e. g.*, see rights of independence, § 52; most-favored nation clause, § 536; pacific blockade, § 592). Emphasis or interpretation, it should be noted, means neither advocacy nor apology. The author holds no brief for his country's stand on controversial questions. On the contrary, when he regards the practice of the United States as inconsistent with prevailing usage or wrong in principle he does not hesitate to say as much, and say it with effect (*e. g.*, see claims against the United States arising out of mob violence, §§ 290-292.)

While emphasis upon the American point of view is, perhaps, its outstanding feature, this work is much more than a mere exposition of the law and practice of the United States in international matters. It is a treatise on the modern law of nations in the broadest sense. The principal controversies of the recent war are admirably summarized and temperately discussed (*e. g.*, submarine mines, §§ 716-718; war zones, §§ 720-721; searches in port, §§ 727-728; interference with mails, § 730; armed merchantmen, §§ 742-743; submarines, §§ 747-749; foodstuffs as contraband, §§ 803-805; continuous voyage, §§ 811-813; blockade, §§ 829-832). References are made to the Covenant of the League of Nations and to the recent peace treaties, wherever the matter is relevant. And this in a treatise on inter-

national law "chiefly as interpreted and applied by the United States"! Such inclusions are in general a valuable feature of the book, although, in the reviewer's opinion, the allocation of space to this kind of material has been a little overdone in a few instances, especially where the matter is highly controversial or has only an ephemeral significance. In discussing the question of the Bosphorus and the Dardanelles, for example, the author devotes a section to the now discredited and discarded Treaty of Sèvres (§ 158). And two sections are devoted to the reparations clauses of the treaty with Germany (§§ 298-299). On the other hand, the inclusion of a somewhat detailed description of the organization, competence, and procedure of the Permanent Court of International Justice recently established at The Hague seems abundantly justified (§§ 573-575). In this connection, it is of interest that the author regrets the elimination of the provision for limited compulsory adjudication of justiciable differences, included in the original draft submitted by the Advisory Committee of Jurists, and expresses the opinion that the project submitted by the Advisory Committee was "the most comprehensive and promising instrumentality for the adjustment of grave international differences which has thus far been proposed for general adoption (§ 576).

Professor Hyde is especially to be commended for the high standard of objectivity attained in a work moulded largely, as this must have been, in the trying times of nominal neutrality and actual war. Lapses in this respect are neither numerous nor important (see §§ 108, 116, 231). It might have been expected that post-bellum disillusionment would have toned down the discussion of certain topics. For example, the author suggests that the importance of self-determination fully dawned upon statesmen during the World War. "Between the years 1914 and 1920," he says, "statesmen became fully aware of the disturbing effect upon the general peace which was likely to ensue if a victorious belligerent were permitted to suffer no restraint in enforcing the transfer to itself of hostile territories. The nature and extent of the equities of the inhabitants were perceived, and the value of respect for them as a means of preserving tranquility was acknowledged" (§ 108, and see also § 493). Again, discussing proposed extensions of the three-mile limit from the point of view of the general interest of the international society as well as the particular interest of the individual state, the author concludes: "In balancing these opposing equities, the significant fact is that as an incident of the World War the interests of that society are more clearly perceived than heretofore, and, in consequence, the relative value of them newly and amply appraised" (§ 145). If these are instances of a perspective slightly warped by the nearness and the heat of recent events, as the reviewer believes, they are noteworthy only because they are so exceptional. The work is remarkably free from the sort of partisanship and false perspective which has marred so much of the writing of recent years.

There is little or nothing in the content of the work which invites criticism. A few minutiae may be noted. Discussing the case of The Springbok, the author says: "It is not believed that the reference to blockade was

essential to the decision, in view of the conclusion of the court as to the ultimate destination of the contraband goods" (§ 809). In one sense this is quite true, but in another it is likely to be misleading, since the court clearly rested its decision upon an application of the doctrine of continuous voyage to breach of blockade. Elsewhere Oppenheim is cited, apparently with approval, to the effect that conditional recognition cannot be withdrawn in case the condition is not complied with, but that the recognizing state may intervene to compel compliance with the condition imposed (§ 38). It may be doubted whether usage supports any such generalization. And if the principle of the thing is to determine, should not withdrawal of recognition be preferred to intervention? Again, in one of his introductory sections, the author remarks, citing Bonfils-Fauchille, Rivier, and Scott, that "it is no longer seriously maintained that the existence of law is necessarily dependent upon the presence of a power to enforce it" (§ 4). The remark is too sweeping. The Austinians are by no means extinct, although the reviewer agrees with the author that their position is untenable.

If there is an occasional lapse into ambiguity of thought or expression, the instances are only noteworthy because they are so rare. There is probably no more serious instance in the entire book than the one found in the author's discussion of islands existing or arising in a boundary river. He says: "If by slow and imperceptible change of the thalweg the boundary is altered in such a way as to separate an island from the state to which it may have belonged, the right of ownership of the latter is not lost. This fact has been frequently recognized in European treaties. The right of sovereignty is, however, believed to change with the alterations of the thalweg. Thus the former sovereign, although retaining its title, would appear to lose the right of supreme control" (§ 139). It may be that even here the confusion exists only in the mind of the reviewer, but the passage seems far from clear (see also §§ 25, last paragraph, and 106).

The extensive use of diplomatic correspondence and other state papers presents an especially difficult problem in the weighing of evidence. How much should the protestations and asseverations of diplomacy be discounted? Discussing the pursuit of Villa in 1916, for example, the author observes that our State Department, in accepting the Mexican proposal of a plan permitting reciprocal pursuit of bandits, "was under the impression that the Mexican authorities assented to the punitive expedition against Villa" (§ 67). This seems to take the department's diplomatic naïveté in the matter too seriously. In general, however, the author has been conservative in his appraisal of such materials, with excellent results.

The scope of the work leaves more to be desired. For one thing, the reviewer ventures the suggestion that too much has been included which is essentially political rather than legal in nature. Difficult as the problem may be, is it not time to insist upon a more satisfactory distinction between international law and international politics? Why, for illustration, should the Monroe Doctrine be considered at length in a treatise on international law? (§§ 85-97). What is there about self-determination that entitles it to a place in a book on law? (§§ 108-109). Is not a considerable part of the space

devoted to intervention occupied by matter essentially political instead of legal? (§§ 69-84). Take, for further illustration, the Senate Resolution of 1912 growing out of debates in regard to possible concessions to the Japanese in the region of Magdalena Bay. What does it gain to say that "this resolution gives expression to a moderate and reasonable enunciation of the principle of self-defense"? (§ 90). The suggestion might be significant in a book on politics, but in a book on law it seems meaningless. Or consider the author's altogether excellent discussion of intervention. He remarks that "to prevent the illegal interference by one state with the political independence of another, a third state may doubtless on principle lawfully intervene, even though its own safety is not endangered by the action to which it is opposed" (§ 71). Again, he says that "on principle a group of states acting in concert has no broader right of intervention than that possessed by a single state" (§ 74). Usage seems to point the other way in each instance. If usage is to be ignored because history speaks with "a medley of discordant voices," it is difficult to see what principle of law there is which supports the author's conclusions set forth above. Is it not the truth that in most of its aspects this question is essentially a political one wholly incapable of being rationalized along legal lines? There are plenty of precedents for most of Professor Hyde's inclusions, but the reviewer believes that departure from precedents in this respect would have been widely welcomed. For another thing, the treatment of case law seems inadequate and incomplete. The volumes contain a great deal that is valuable in the way of discussion of court decisions. A few topics are fully annotated. But, from the lawyer's point of view at least, it would have been highly advantageous to include more exhaustive surveys of the important cases and more critical analyses of the principles upon which the decisions rest. What the reviewer has said upon these two points—the inclusion of matters essentially political and inadequate treatment of cases—is more by way of regret than criticism. It would be a sufficient answer, of course, for the author to retort that he did not elect to write precisely that type of book.

Certainly, from the point of approach which the author has elected to take, a most masterly contribution has been made. The work is much more than a conventional treatise written down to date. Although the author discusses the so-called laws of warfare along traditional lines, taking the view that usages in regard to the conduct of war must continue to be of some importance so long as states resort to war to settle their disputes, he entertains no illusions. Discussing implements of destruction, he says: "The state that anticipates recourse to the sword as the normal method of adjusting its differences of gravest kind must anticipate also participation in conflicts characterized by the use of hideously cruel instrumentalities, and in which the victory may be denied that belligerent which hesitates long to adopt them. For that reason there seems to be little hope of amelioration of present practices or of certain existing abuses. The prospect of better things seems to lie in the success of a different endeavor, through the attempt by concerted action to allay causes of international controversies, and to insure the just solution by amicable means of those which threaten the gen-

eral peace" (§ 660). Neutrality, likewise, is treated in familiar fashion; but the author concludes that the present practice of neutrality leaves much to be desired. He suggests two alternatives: either we may have world organization, which would practically eliminate the traditional notion of neutrality, or we may seek to bind non-belligerent states to genuine non-participation which requires "the actual withholding of the resources of neutral territory from every belligerent without discrimination." In any event, neutrality as it has been understood hitherto "promises frail means of abating wars or of exercising any salutary influence upon belligerents" (§ 889).

The treatment of the normal rights and duties of states in peaceful intercourse contrasts significantly with that found in the older treatises. There is no re-threshing of the old chaff. Little or no emphasis is placed upon theory. The attempt is rather to accomplish a systematic exposition of usage. And even here generalizations from usage are made with great conservatism. Where practice varies and the rule is unsettled or in doubt, the author is not reluctant to say so (*e. g.*, see effect of change of sovereignty on public debts, § 127; question of bays, § 148; navigation of rivers, § 182; privileges of transit by land, § 194). The emphasis, moreover, is always upon the mutability of law. Law, in the author's conception, is something which grows to meet changing needs. The suggestions offered as regards the trend of development are always interesting and informing (*e. g.*, see §§ 2, 52, 55, 57, 108, 194). And finally, the emphasis is always upon the general interest of the family of nations, analogous to that conception of the social interest which is now exerting so significant an influence upon the development of private law. This is in striking contrast with the stress laid by earlier writers upon the liberty, not to say license, of the individual state. It reflects a changing viewpoint which may well be regarded as one of the most hopeful signs of the time (*e. g.*, see proposed extensions of the three-mile limit, § 145; free navigation of rivers, § 182; free navigation of the air, § 191; wireless communication, § 192).

American scholars have made numerous contributions to the literature of international law and many of these contributions have been of more than ordinary significance. Of a long list, two now seem to be unquestionably outstanding. One of these is the work of Charles Cheney Hyde and the other is the work of Henry Wheaton.

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DOCUMENTS AND THEIR SCIENTIFIC EXAMINATION. By C. Ainsworth Mitchell. London: Charles Griffin & Co. 1922. Pp. xii, 215.

In a very direct and concise way this book is concerned with the practical application of scientific and mechanical methods and means to the examination of writings with a view to the determination of questions affecting their genuineness. Such determination may turn upon obscure facts which are easily overlooked: upon whether the ink used carries a particular constituent or is of one age or another; if written with a typewriter, whether of one manufacture or another, or whether with a machine put out